

1982 WL 189172 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 18, 1982

**\*1 Re: All Saints Anglican Church**

Honorable Irene K. Rudnick  
Representative  
District No. 85  
310D Blatt Building  
Columbia, SC 29211

Dear Representative Rudnick:

You have recently asked this Office for an opinion concerning the burial of human ashes in a churchyard cemetery. A concise answer is that there are no State statutes or regulations addressing this issue and such burial is subject only to general health and nuisance laws (and local laws).

Crematoriums operate by burning bodies at 2000° F. This process reduces the body to bone ash, an entirely inorganic substance, consisting chiefly of calcium phosphate. Any and all bacteria and diseases are killed, and cremation is recognized as a highly sanitary method of disposing of human bodies. But this change of composition of the body does not eliminate the stigma attached to human remains. For all purposes other than health and sanitation, human ashes are treated like any other human remains. See [Moore v. U.S. Cremation Co.](#), 275 N.Y. 105, 113 A.L.R. 1124 (1935).

The principal South Carolina case dealing with church cemeteries in general is [DeBorde v. St. Michael and All Angels Episcopal Church](#), 272 S.C. 490, 252 S.E.2d 876 (1976). That case did not discuss ashes, themselves, but dealt with a neighborhood that did not want a church cemetery nearby. The court decided that the proposed cemetery was unobtrusive and was not a nuisance that should be prohibited.

South Carolina law does not require any particular mode or manner of disposing of dead bodies, provided, as mentioned above, that the disposition is sanitary and decent. Thus, there is not even any law that says that ashes must be buried at all and it would be perfectly all right for a relative's ashes to be kept in the home or scattered to the wind.

On the other hand, though the State has little interest in the mode of burial, it does have an interest in keeping a record of deaths and in assuring that bodies are not cremated so as to disguise the cause of death. Therefore, [§ 17-5-310, CODE OF LAWS OF SOUTH CAROLINA \(1976\)](#), requires a permit from a coroner or county medical examiner before a body may be cremated. And DHEC Regulation 61-19 § 23 [Revised May, 1981] requires the person taking custody of a body to obtain a burial-transit permit. New § 23(d) says that the burial-transit permit and the death certificate must be obtained prior to cremation. Though these statutes and regulations do not affect the church directly, the church would be wise to insure compliance in connection with any cremation.

Obviously, the church will have to comply with all local city and county laws. I am not familiar with Aiken zoning regulation, but this is one facet of local law that must be investigated.

Sincerely,

Frank L. Valenta, Jr.  
State Attorney

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